



United States Environmental Protection Agency General Permit for New or Modified Minor Sources of Air Pollution in Indian Country

<http://www.epa.gov/air/tribal/tribalnsr.html>

Request for Coverage under the General Air Quality Permit for New or Modified True Minor Source Hot Mix Asphalt Plants in Indian Country

Last Modified: November 14, 2013

Version 1.0

This request for coverage under the General Air Quality Permit for True Minor Source Hot Mix Asphalt Plants applies to the construction of new true minor source hot mix asphalt plants or the modification of existing true minor source hot mix asphalt plants in Indian country that meet certain production limitations and fuel restrictions. A hot mix asphalt plant is a facility that manufactures hot mix asphalt by heating and drying aggregate and mixing with asphalt cements, and is comprised only of any combination of the following activities: dryers, liquid asphalt storage tanks, fuel oil storage tanks, auxiliary heaters (including hot oil heaters), material storage handling and transfer systems, generators, storage bins/silos, storage piles, and haul roads. This general air quality permit does not apply to asphalt plants that perform contaminated soil remediation.

You qualify to apply for coverage under this general permit if you meet all of the following criteria:

- You plan to construct an entirely new true minor source batch or drum hot mix asphalt plant or modify the operations at an existing true minor source batch or drum hot mix asphalt plant;
- Your new or modified true minor source hot mix asphalt plant is located within Indian country;
- Your facility produces only hot mix asphalt;
- Are not located in a severe or extreme ozone nonattainment area;
- Are not located in a serious carbon monoxide nonattainment area;
- Your facility has a potential to emit (PTE) less than the New Source Review (NSR) major source thresholds;
- You use only natural gas, propane, distillate fuel and biodiesel in the dryer/mixer;
- The asphalt dryer/mixer at your facility is controlled by a baghouse (fabric filter);
- The new or modified source's asphalt production rate is equal to or less than 100,000 tons per month for a drum mix plant, or 33,000 tons per month for a batch mix plant;
- You use only the following fuel(s) in the auxiliary heaters: natural gas, propane, distillate fuel and biodiesel;
- The total maximum heat input capacity of the auxiliary heaters (including hot oil heaters) is equal to or less than 10 MMBtu/hour;
- You use only diesel, or biodiesel in the engines/generators;
- If located in an area other than a serious ozone nonattainment area, the total liquid fuel usage for the generators at your new or modified facility is equal to or less than 12,500 gallons per month;
- If located in a serious ozone nonattainment area, the total liquid fuel usage for the generators at your new or modified facility is equal to or less than 2,500 gallons per month;
- Each asphalt storage tank and fuel storage tank has a maximum capacity less than 39,890 gallons;
- You demonstrate that you meet one of the criteria listed in Appendix A with respect to the protection of any and all species that are federally-listed as endangered or threatened under the Endangered Species Act (ESA) or of habitat that is federally-designated as "critical habitat" under the ESA; and
- You have followed the screening process in Appendix B to determine if the construction, modification or operation of your new or modified true minor source of air pollutants has the potential to cause effects to historic properties (pursuant to the National Historic Preservation Act (NHPA)), and whether you need to contact the appropriate state or tribal representative for further information.

More Information

This General Air Quality Permit for Hot Mix Asphalt Plants is not applicable to:

- Facilities that perform contaminated soil remediation.
- Facilities that produce cold mix asphalt.

Information on the definition of a “modification” and “PTE” can be found at 40 CFR 49.152(d) and in the “Instructions” document. Additional information on the applicability of the Indian Country NSR rule can be found at 40 CFR 49.153.

Information on the ozone attainment status of the area where your facility is located can be found at: <http://www.epa.gov/airquality/greenbook/>. You may also contact your reviewing authority for information on the area’s attainment status.

The reviewing authority retains discretion to deny coverage under a general permit and require a source-specific permit even if the above criteria are met.

Instructions

Step 1: Complete all sections of the permit application. If you have questions, please contact the reviewing authority.

Step 2: Submit a copy of this permit application to the reviewing authority and the tribe in the area where the source is locating.

After you submit the application to the Reviewing Authority:

- You may not commence construction until you receive notification of the final decision on your application for coverage under this general permit.
- Your reviewing authority will act on your permit as expeditiously as possible, and will notify you if more information is needed in writing within **30 days** from receipt of your application. Upon deeming the application complete, and if any additional information requested by the reviewing authority is received within 15 days of the request, the reviewing authority will follow the procedures outlined in 40 CFR 49.156(e) and your permit application will be granted or denied no later than 90 days after the receipt of your coverage request.
- Your reviewing authority will send you a letter notifying you of the approval or denial of your request for coverage under this general permit if the reviewing authority determines that your request for coverage under this general permit has all the relevant information and is complete. Such a letter is a final permit action for purposes of judicial review only for the issue of whether your source qualifies for this general permit

Applicants are welcome to send comments on the U.S. Environmental Protection Agency’s (EPA’s) need for the information in this application, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques, to the Director, Collection Strategies Division, U.S. Environmental Protection Agency (2822T), 1200 Pennsylvania Ave., NW, Washington, D.C. 20460. Include the OMB control number in any correspondence. Do not send the completed form to this address.

Section 2: Facility Information

12. This application is for:

Construction/Relocation of a new hot mix asphalt facility (please describe the proposed new source).

Modification of an existing hot mix asphalt facility. Please describe the modification below. The definition of "modification" can be found at 40 CFR 49.152(d), and in the "Instructions" document.

13. North American Industry Classification System/Standard Industrial Classification Code and/or description of the facility:

14. Type of Asphalt Plant: (check all that apply):

Stationary Portable Batch Mix Parallel Flow Drum Mix Counterflow Drum Mix

15. Is your new or modified facility located in an ozone nonattainment area? Information on the ozone attainment status of the area where your facility is/will be located can be found at:

<http://www.epa.gov/airquality/greenbook/>

Yes No

If yes, specify the classification of the ozone nonattainment area:

Marginal Moderate Serious Severe Extreme

Note: If your facility is located in severe or extreme ozone nonattainment area, it does not qualify for this general permit and you must obtain a site-specific permit from reviewing authority.

16. Is your new or modified facility located in a particulate matter (PM₁₀) nonattainment area? Information on the attainment status of the area where your facility is located can be found at:

<http://www.epa.gov/airquality/greenbook/>.

Yes No

If yes, specify the classification of the PM₁₀ nonattainment area:

Moderate Serious

17. Is your new or modified facility located in a particulate matter (PM_{2.5}) nonattainment area? Information on the attainment status of the area where your facility is located can be found at:

<http://www.epa.gov/airquality/greenbook/>.

Yes No

18. Is your new or modified facility located in a carbon monoxide (CO) nonattainment area? Information on the attainment status of the area where your facility is located can be found at:

<http://www.epa.gov/airquality/greenbook/>

Yes No

If yes, specify the classification of the CO nonattainment area:

Moderate Serious

Note: If your facility is located in a serious CO nonattainment area, it does not qualify for this general permit and you must obtain a site-specific permit from the reviewing authority.

19. Is the potential to emit (PTE) of your new facility, or the emissions increase from your modified existing facility, equal to or above the applicable minor NSR thresholds listed below for ANY of the listed pollutants, both in tons per year (tpy)? Emissions from your facility may be calculated using the PTE calculator available online at:

<http://www.epa.gov/air/tribal/tribalnsr.html>. Be sure to include all new, modified, or existing emission units when determining PTE.

| Pollutant | Attainment Area | Nonattainment Area |
|---|-----------------|--------------------|
| Carbon Monoxide (CO) | 10 tpy | 5 tpy |
| Particulate Matter (PM) | 10 tpy | 5 tpy |
| Particulate Matter (PM ₁₀) | 5 tpy | 1 tpy |
| Particulate Matter (PM _{2.5}) | 3 tpy | 0.6 tpy |
| Sulfur Dioxide (SO ₂) | 10 tpy | 5 tpy |
| Nitrogen Oxides (NO _x) | 10 tpy | 5 tpy |
| Carbon Monoxide (CO) | 5 tpy | 2 tpy |

Yes No

20. If located in an attainment area, is the PTE of your facility less than 250 tpy for PM, PM₁₀, PM_{2.5}, VOC, NO_x, CO, and SO₂? Be sure to include all existing, new, and modified emission units.

Yes No

If you answered **'No,'** your source does not qualify for the minor NSR program. Please contact your reviewing authority to apply for a site-specific permit. If you answered **'Yes,'** continue on to the next question.

21. If located in a nonattainment area, is the PTE of your facility for the particular nonattainment pollutant less than the NSR major source thresholds below for ALL pollutants? Be sure to include all existing, new, and modified emission units.

| Pollutant | Nonattainment Classification | NSR Major Source Threshold |
|---|---------------------------------|-----------------------------------|
| Ozone | Marginal | 100 tpy of VOC or NO _x |
| | Moderate | 100 tpy of VOC or NO _x |
| | Serious | 50 tpy of VOC or NO _x |
| | Severe | 25 tpy of VOC or NO _x |
| | Extreme | 10 tpy of VOC or NO _x |
| PM ₁₀ | Moderate | 100 tpy |
| | Serious | 70 tpy |
| CO | Moderate | 100 tpy |
| | Serious | 50 tpy |
| SO ₂ , NO ₂ , PM _{2.5} | No nonattainment classification | 100 tpy |

Yes No N/A - Not located in any nonattainment area

If you answered **'No,'** your source does not qualify for the minor NSR program. Please contact reviewing authority to apply for a site-specific permit. If you answered **'Yes' or 'N/A,'** continue on to the next question.

22. Maximum asphalt production capacity after construction/modification/relocation:
Tons/yr: _____

23. Projected asphalt production rate after construction/modification/relocation:
Tons/yr: _____

24. What will the distance of the proposed facility be from the nearest property boundary?
Feet: _____

From the nearest residence?
Feet: _____

25. Does this facility perform contaminated soil remediation?

Yes No

If you answered **'Yes'** to this question, your facility does not qualify for a general permit and you must obtain a site-specific permit from reviewing authority.

Section 3: Technical Information

Dryer

26. Dryer ID: _____

27. Construction/Modification Date of the Dryer (mm/dd/yyyy; actual or anticipated): _____

28. Dryer Burner Capacity (MMBtu/hour): _____

29. Fuel(s) Used in the Dryer:

Natural Gas Propane Distillate Fuel Biodiesel

30. Is the dryer/mixer controlled by a baghouse (Fabric Filter)?

Yes No

If you answered No to this question, your facility does not qualify for a general permit and you must obtain a site-specific permit from reviewing authority.)

31. Internal Combustion Engines (including emergency generators)

| Unit ID # | Unit Description | Maximum Rated Capacity (HP) | Types of Fuel(s) Used ¹ | Manufactured Date (mm/dd/yyyy) | Model Year |
|-----------|------------------|-----------------------------|------------------------------------|--------------------------------|------------|
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |

¹ Only diesel fuel or biodiesel are allowed in this general permit.

34. Volatile Liquid Storage Tanks

This section applies to storage tanks used to store liquids materials. Please provide the following information for each Storage Tank.

| Unit ID# | Type of Liquid | Capacity (gallons) | Vapor pressure of liquid (psi) | Is the tank above or underground? | Date of installation (if existing) |
|----------|----------------|--------------------|--------------------------------|-----------------------------------|------------------------------------|
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |

Section 4: Information on Compliance with Federal Statues Necessary for Requesting Coverage under the General Permit

35. Endangered Species Act

Have you demonstrated that you meet one of the criteria listed in Appendix A with respect to the protection of any and all species that are federally-listed as endangered or threatened under the ESA or of habitat that is federally-designated as "critical habitat" under the ESA? If no, you cannot request coverage under this permit.

Yes No

If yes, then you need to provide the appropriate documentation to the EPA to qualify for coverage under this permit. Please indicate under which criterion in Appendix A you are satisfying this requirement:

A B C D E

36. National Historic Preservation Act

Have you followed the screening process in Appendix B to determine if the construction, modification or operation of your new or modified true minor source of air pollutants has the potential to cause effects to historic properties (pursuant to the NHPA), and whether you need to contact the appropriate state or tribal representative for further information? If no, you cannot request coverage under this permit.

Yes No

If yes, then provide the appropriate documentation to the EPA to qualify for coverage under this permit.

Applicant's Statement (to be signed by the applicant)

I certify that this document and all attachments were prepared under my direction or supervision according to a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete.

Name: _____ Name: _____ Date: _____
(Signature) (Print or Type)

Title: _____

Appendix A - Endangered Species Act Requirements

The purpose of this appendix is to assist you in complying with the requirements of your request for coverage under the General Air Quality Permit for True Minor Source Hot Mix Asphalt Facilities in Indian Country. In order to be eligible for coverage under this permit, you must demonstrate that you meet one of the criteria listed in this appendix with respect to the protection of any and all species that are federally-listed as endangered or threatened under the ESA or of habitat that is federally-designated as “critical habitat” under the ESA.

This appendix provides you information on the following:

- **Section 1.0:** ESA Eligibility Criteria and
- **Section 2.0:** Guidance for Determining Which ESA Criteria Applies.

1.0 ESA Eligibility Criteria

You must certify in your request for coverage under the general permit that you meet one of the eligibility criteria listed below in order to be eligible for coverage under the general permit. You must also specify in your request for coverage the basis for your selection of the applicable eligibility criterion and provide documentation supporting the criterion selected with your request for coverage under the general permit. If you do not meet any of these ESA eligibility criteria, you will not be eligible for coverage under this permit and you must apply for a site-specific permit.

Note: (1) Regardless of the criterion selected, your request for coverage must provide sufficient documentation to support your determination that you satisfy the requirements of the particular criterion you have selected. (2) While coordination between you and the U.S. Fish and Wildlife Service (FWS) and/or the National Marine Fisheries Service (NMFS; together, the “Services”) is not necessarily required in all cases, the EPA encourages you to coordinate with the Services and to do so early in the planning process prior to submitting your request for coverage.

Criterion A:

No federally-listed threatened or endangered species or their designated critical habitat(s) are likely to occur within the action area.⁴

Criterion B:

Federally-listed threatened or endangered species or their designated critical habitat(s) are likely to occur within the action area of your source and the construction and operation of your new minor source or construction and operation of the modification to your existing minor source is not likely to adversely affect listed threatened or endangered species or critical habitat. This determination may include consideration of any air pollution controls or other changes to the construction and/or operation of your new or modified source that you will adopt to ensure that construction, modification or operation of your new or modified source is not likely to adversely affect listed species and critical habitat. To make this certification, you must include the following in your request for coverage: (1) identify any federally listed species and/or designated habitat located within the action area of your source; (2) the distance between your site and the listed species or designated critical habitat (in miles); and (3) any other information necessary (e.g., a map) to show that

⁴ *Action area* means all areas to be affected directly or indirectly by the Federal action and not merely the immediate area involved in the action [50 CFR 402.02].

the construction/ modification and operation of your new or modified source are not likely to cause any adverse effects to the listed threatened or endangered species or their critical habitat.

Criterion C:

Coordination between you and the Services has been concluded. The coordination must have addressed the effects of your new or modified true minor source's construction/modification and operation on federally-listed threatened or endangered species and federally-designated critical habitat, and must have resulted in a written concurrence from the relevant Service(s) that your new or modified true minor source's construction/modification and operation are not likely to adversely affect listed species or critical habitat. You must include copies of the correspondence between yourself and the Services with your request for coverage under the general permit.

Criterion D:

Consultation between another Federal Agency and the FWS and/or the NMFS under section 7 of the ESA has been concluded. The consultation must have addressed the effects of your minor source's construction/modification and operation on federally-listed threatened or endangered species and federally-designated critical habitat. The result of this consultation must be either:

1. A biological opinion that concludes that the action in question (taking into account the effects of your source's construction/modification and operation) is not likely to jeopardize the continued existence of listed species, or to result in the destruction or adverse modification of critical habitat; or
2. Written concurrence from the applicable Service(s) with a finding that the source's construction/modification and operation are not likely to adversely affect federally-listed species or federally-designated habitat.

You must include copies of the correspondence between yourself and the Services in your request for coverage under the general permit.

Criterion E:

Your construction/modification and operation activities are authorized through the issuance of an incidental take permit under section 10 of the ESA, and this authorization addresses the effects of the source on federally-listed species and federally-designated critical habitat. You must include copies of the incidental take permit and associated documentation and correspondence between yourself and the Services with your request for coverage under the general permit.

You must comply with any applicable terms, conditions, or other requirements developed in the process of meeting one of the eligibility criteria (A-E) in this section to remain eligible for coverage under this permit. Documentation of these requirements must be kept as part of your permit application and shall be maintained by the permittee for the duration of time the affected emissions unit(s) is(are) covered under the permit.

2.0 Determining Which Criterion Applies

To qualify for this permit, you need to meet one of the five criteria listed above. You must follow the procedures in Steps 1 through 4 below to determine the ESA criterion, if any, under which your project is eligible for permit coverage.

2.1 Step 1

Determine if Listed Threatened or Endangered Species or their Designated Critical Habitat(s) are Likely to Occur within the Action Area of your Minor Source.

You must determine, to the best of your knowledge, whether species federally listed as either threatened or endangered, or their critical habitat(s), are located within the action area of your minor source.⁵ To make this determination, you should first determine if listed species and/or critical habitat are expected to exist in your county or township or nearby counties or townships to determine if species/habitat in those areas could potentially be affected by the construction/modification or operation of your new or modified source. The local offices of the FWS, NMFS, and State or Tribal Heritage Centers often maintain lists of federally listed endangered or threatened species on their internet sites. For FWS terrestrial and aquatic species information, you can use the FWS on-line mapping tool, the Information, Planning, and Consultation System, located at <http://www.fws.gov/ipac/>.

Note: To determine the field office that corresponds to your project site, visit <http://www.fws.gov/endangered/regions/index.html> and <http://www.nmfs.noaa.gov/> (under the left tab for “Regions”).

In most cases, species and/or critical habitat lists allow you to determine if any such species or habitat exists in your county or township. You can also find critical habitat designations and associated requirements at 50 CFR Parts 17 and 226 (see <http://www.access.gpo.gov>). You may also use the FWS Critical Habitat Portal (see <http://criticalhabitat.fws.gov/crithab/>).

- ***If there are listed species and/or critical habitat in your county or township (or nearby areas in which species/habitat could potentially be affected by the construction/modification of your new or modified source)***, you should contact your local FWS, NMFS, or State or Tribal Heritage Center to determine if the listed species are known to exist within the action area of your minor source and if any designated critical habitat areas overlap the action area of your minor source.
 - o If your local FWS, NMFS, or State or Tribal Heritage Center indicates that these species and/or critical habitat could exist within the action area of your minor source, you must do one of the following:
 - Conduct visual inspections. This method may be particularly suitable for sites that are smaller in size or located in non-natural settings such as highly urbanized areas or industrial parks where there is little or no natural habitat.
 - Conduct a formal biological survey. In some cases, particularly for larger sites, biological surveys may be an appropriate way to assess whether species are located within the action area of your minor source and whether there are likely to be adverse effects to such species. Biological surveys are frequently performed by environmental consulting firms. A biological survey may in some cases be useful to conduct in conjunction with Steps 2, 3, or 4 of these instructions.
 - Follow the instructions in Steps 2 – 4 below, as applicable. Note that many but not all measures imposed to protect listed species under these steps will also protect critical habitat. Thus, to meet the eligibility requirements of this permit the measures needed to protect critical habitat may be

⁵ For definitions of terms that you might encounter when hearing or reading about the endangered species program, go to: <http://www.fws.gov/midwest/endangered/glossary/index.html> and <http://www.fws.gov/northeast/nyfo/es/actionarea.htm>.

separate from those needed to protect listed species.

- ***If there are no listed species in your county or township (or nearby areas in which species/habitat could potentially be affected by the construction/modification of your new or modified source) and no critical habitat areas in your action area***, you may select criterion A as the ESA criterion for which your project is eligible in your request for coverage under the general permit. You must also provide a description of the basis for the criterion selected on your request for coverage form and provide documentation supporting the criterion selected.

2.2 Step 2

Determine if the Construction/Modification or Operation of Your New or Modified Minor Source is Likely to Adversely Affect Listed Threatened or Endangered Species or Designated Critical Habitat

If in Step 1 you determine, based on communication with your local FWS, NMFS, or State or Tribal Heritage Center, or otherwise, that listed species and/or critical habitat could exist within the action area of your new or modified minor source, you must next assess whether the construction/modification or operation of your new or modified minor source is likely to adversely affect listed threatened or endangered species or designated critical habitat.

Potential adverse effects from construction/ modification and operation activities include direct and indirect effects and could include, but are not limited to, the following:

- ***Habitat Disturbance.*** Surface disturbance activities such as excavation, site development, grading, and associated light and noise may adversely affect listed species or their habitat.
- ***Operation of the Source.*** Source operations could result in additional traffic, noise and light that could affect species or habitat.
- ***Water-Related Impacts.*** Changes in water usage or water discharges may affect listed species or their habitat.
- ***Air Emission Impacts.*** Increases in emission of certain pollutants may in certain cases affect vegetation growth patterns which can affect listed species or their habitat.

The scope of effects to consider will vary with each site and project. If you are having difficulty determining whether your project is likely to adversely affect listed species or critical habitat, or one of the Services has already raised concerns to you, you should contact the appropriate office of the FWS, NMFS or Natural Heritage Center for assistance.

- ***If adverse effects to listed threatened or endangered species or their critical habitat are not likely***, then you may select criterion B as the ESA criterion for which your project is eligible in request for coverage under the general permit. You must provide the following specific information with your request for coverage form:
 - 1 . The federally listed species and/or designated habitat are located within the action area of your minor source;
 - 2 . The distance between your site and the listed species or designated critical habitat (in miles); and
 - 3 . Any other information necessary to show that the air emissions from your source are not likely to cause any adverse effects to the listed threatened or endangered species or their critical habitat.
- ***If adverse effects to listed threatened or endangered species or their critical habitat are likely***, you must follow Step 3 below.

2.3 Step 3

Determine if Measures Can Be Implemented to Avoid Adverse Effects

If you make a preliminary determination in Step 2 that adverse effects from the construction/modification or operation of your new or modified minor source are likely to occur, you can still receive coverage under eligibility criterion B of this permit if appropriate measures are undertaken to avoid or eliminate the likelihood of adverse effects prior to applying for coverage under the permit.

These measures may involve relatively simple changes to construction activities such as re-routing construction to bypass an area where species are located, relocating source activities, or modifying the “footprint” of the site. If you are unable to determine which measures to implement to avoid the likelihood of adverse effects, you must coordinate with, or enter into consultation with, the FWS and/or NMFS, in which case you would not be eligible for coverage under eligibility criterion B, but may instead be eligible for coverage under eligibility criterion C, D, or E (described in more detail in Step 4).

- ***If you are able to implement appropriate measures to avoid the likelihood of adverse effects***, then you may select criterion B as the criterion for which your project is eligible in notifying of coverage under the general permit. The measures you adopt to avoid or eliminate adverse effects must be implemented for the duration of the construction/modification and operation of your new or modified minor source and your coverage under this permit. You must also provide a description of the basis for the criterion selected, and the following specific information on your request for coverage form: (1) the federally listed species and/or designated habitat that are located within the action area of your minor source; (2) the distance between your source and the listed species or designated critical habitat (in miles); and (3) what steps were or will be taken to avoid the likelihood of adverse effects
- ***If you cannot determine which measures to implement to avoid the likelihood of adverse effects***, you must follow the procedures in Step 4.

2.4 Step 4

Determine if the Eligibility Requirements of Criterion C, D, or E Can Be Met

If in Step 3 you cannot ascertain which measures to implement to avoid the likelihood of adverse effects, you must contact the FWS and/or NMFS. You may still be eligible for coverage under this permit if any likely adverse effects can be addressed through meeting criterion C, D, or E.

- **Criterion C:** You have coordinated with either of the Services and have addressed the effects of the construction/modification and operation of your new or modified minor source on federally-listed threatened or endangered species and federally-designated critical habitat, which resulted in a written concurrence from the relevant Service(s) that the construction/modification or operation of your new or modified minor source is not likely to adversely affect listed species or critical habitat.

If you have met the requirements of criterion C, then you may select criterion C as the criterion for which your project is eligible for request for coverage under the general permit. As part of your request for coverage, you must provide a description of the basis for the criterion selected with your request for coverage form and must include copies of the correspondence between you and the applicable Service.

- **Criterion D:** Formal or informal ESA section 7 consultation is performed with the FWS and/or NMFS and that consultation addresses the effects of the construction/modification or operation of your minor source on federally-listed and threatened species and designated critical habitat. In order to be eligible for coverage under this permit, consultation must result in a “no jeopardy and no destruction/adverse modification opinion” or a written concurrence by the Service(s) on a finding that the construction/modification or operation of your new or modified minor source are not likely to adversely affect listed species or critical habitat. (For more information on consultation, see 50 CFR Part 402). If you receive a “jeopardy or destruction/adverse modification opinion,” you may continue to work with the FWS and/or NMFS and your permitting authority to modify your project so that it will not jeopardize listed species or result in the destruction or adverse modification of designated critical habitat.

Note that most consultations are accomplished informally. When conducting informal ESA section 7 consultation as a non-federal representative, you must follow the procedures found in 50 CFR Part 402 of the ESA regulations. You must also notify FWS and/or NMFS of your intention and agreement to conduct consultation as a non-federal representative.

Your request for coverage under the general permit is not a federal action that triggers ESA section 7. However, consultation may occur in the context of another federal action for the same project (e.g., where ESA section 7 consultation was performed for issuance of a wetlands dredge and fill permit for the project or for some other federal permit or permission). As noted above, operators may, if they wish, initiate consultation with the Services at Step 3.

Whether ESA section 7 consultation must be performed with the FWS, NMFS, or both Services depends on the listed species that may be affected by the construction/operational activity. In general, NMFS has jurisdiction over marine, estuarine, and anadromous fish species. Operators should also be aware that while formal section 7 consultation provides protection from incidental takings liability, informal consultation does not.

If you have met the requirements of criterion D, you may select criterion D as the criterion for which your project is eligible in notifying of coverage under the general permit. As part of your request for coverage, you must provide a description of the basis for the criterion selected and must include copies of the documentation demonstrating such eligibility, including correspondence and related ESA consultation documentation between yourself, the Federal agency or agencies that requested section 7 consultation and the Services.

- **Criterion E:** Your construction activities are authorized through the issuance of an incidental take permit under section 10 of the ESA, and that authorization addresses the effects of the construction/modification and/or operation of your new or modified source on federally-listed species and designated critical habitat. You must follow FWS and/or NMFS procedures when applying for an ESA Section 10 permit (see 50 CFR §17.22(b)(1) for FWS and §222.22 for NMFS). Application instructions for section 10 permits for FWS and NMFS can be obtained by accessing the FWS and NMFS websites (<http://www.fws.gov> and <http://www.nmfs.noaa.gov>) or by contacting the appropriate FWS and NMFS regional office.

If you have met the requirements of criterion E, you may select criterion E as the criterion for which your project is eligible in notifying of coverage under the general permit. As part of your request for coverage, you must provide a description of the basis for the criterion selected and must include copies of the applicable documentation demonstrating such eligibility including correspondence between yourself and the Services.

Appendix B – Historic Property Screening Process

1.0 Background

Section 106 of the NHPA requires Federal agencies to take into account the effects of Federal “undertakings,” such as the General Air Quality Permit for True Minor Source Hot Mix Asphalt Facilities in Indian Country, on historic properties that are either listed on, or eligible for listing on, the National Register of Historic Places.

To address any issues relating to historic properties in connection with the issuance of this permit, the EPA has developed the screening process in this appendix to enable source owners/operators to: (1) appropriately consider the potential impacts, if any, resulting from the construction, modification, and/or operation of a new or modified emission source on historic properties and, (2) if applicable, determine whether actions can be taken to mitigate any such impacts. Although each decision to allow coverage of individual minor sources under this permit does not constitute a separate Federal undertaking, the screening process in this appendix provides an appropriate site-specific means of addressing historic property issues in connection with the EPA’s issuance of the permit.

Key Terms

Historic property- prehistoric or historic districts, sites, buildings, structures, or objects that are included in or eligible for inclusion in the National Register of Historic Places, including artifacts, records, and remains that are related to and located within such properties

SHPO – The State Historic Preservation Officer for a particular state

THPO or Tribal representative – The Tribal Historic Preservation Officer for a particular Tribe or, if there is no THPO, the representative designated by such Tribe for NHPA purposes

2.0 Instructions for Source Owners/Operators

You are required to follow the screening process in this appendix to determine if the construction, modification or operation of a new or modified minor source of air pollutants on your site has the potential to cause effects to historic properties, and whether or not you need to contact your State Historic Preservation Officer (SHPO), Tribal Historic Preservation Officer (THPO), or other tribal representative for further information. You may not submit your request for coverage under the general permit until you have completed this screening process. The following four steps describe how applicants can meet the historic property requirements under this permit.

2.1 Step 1

Have prior professional cultural resource surveys or other evaluations determined whether historic properties exist in the area of your proposed source? Or, have prior earth disturbances precluded the existence of historic properties in the area of your proposed source?

If it has already been determined that no historic properties exist in the area of your proposed source based on available information, including information that may be provided by your applicable SHPO, THPO, or other tribal representative, then you may indicate this on your request for coverage under the general permit, and no further screening steps are necessary.

Similarly, if earth disturbances that have occurred prior to your project have eliminated the possibility that historic properties exist on your site or in the area affected by your new or modified minor source, you may indicate this on your request for coverage, and no further screening steps are necessary.

After submitting your request for coverage under the general permit, and during the 30-day period after submitting your request for coverage under the general permit, the SHPO, THPO, or other tribal representative may request that the EPA deny coverage under this permit based on concerns about potential adverse impacts to historic properties. The EPA will evaluate any such request and notify you if any additional information is needed to address adverse impacts to historic properties before continuing review of your request for coverage under the general permit.

2.2 Step 2

If you are constructing, or modifying a minor source of air pollutants, as defined in 40 CFR § 49.152, you must determine if the construction, modification or operation of the minor source will have an effect on historic properties.

If your answer to the questions in Step 1 is “no,” then you must assess whether the activities related to the construction, modification or operation of your new or modified minor source will have an effect on historic properties. Activities that could have an adverse effect on historic properties could include, for example:

- Excavations;
- Demolitions of existing buildings;
- Construction of foundations (e.g., for buildings, tanks or stacks);
- Installations of underground tanks;
- Addition of impervious surfaces; and
- Increases in truck traffic during excavation, demolition, or construction.

Note: This list is not intended to be exhaustive. Other activities that are not on this list may involve earth-disturbing activities and must also be examined for their potential to affect historic properties. For more information, go to the National Park Service, National Register of Historic Places database found at <http://www.nps.gov/history/nr/research/index.htm>.

The assessment may be based on a site map of your source and an analysis of historical sources, knowledge of the area, an assessment of the types of activities you are engaging in, considerations of any controls and/or management practices you will adopt to ensure that your activities will not have an effect on historic properties, and any other relevant factors.

If you determine based on this assessment that the activities related to the construction, modification or operation of your new or modified minor source will not cause effects to historic properties, you may indicate this on your request for coverage under the general permit, and document the basis for your determination in your request for coverage and no further screening steps are necessary.

After submitting your request for coverage, and during the 30 days after the receipt of your request, the SHPO, THPO, or other tribal representative may request that the EPA delay your coverage under the permit based on concerns about potential adverse impacts to historic properties. The EPA will evaluate any such request and notify you if any additional information is needed to address adverse impacts to historic properties before continuing review of your request for coverage under the general permit.

If you are installing or modifying equipment that has the potential to have an adverse effect on historic properties, then you must proceed to Step 3.

2.3 Step 3

If you are constructing or modifying a minor source and you have not satisfied the conditions in Steps 1-2, you must contact and consult with the appropriate historic preservation authorities.

Where you are constructing or modifying a minor source and you cannot determine in Step 2 that this activity will not have effects on historic properties, then you must contact the relevant SHPO, THPO, or other tribal representative to request their views as to the likelihood that historic properties may be adversely affected by the construction, modification or operation of your new or modified minor source.

Note: Addresses for SHPOs and THPOs may be found on the Advisory Council on Historic Preservation's (ACHP's) website (<http://www.achp.gov/programs.html>). In instances where a tribe does not have a THPO, you should contact the appropriate Tribal government office designated by the tribe for this purpose when responding to this permit eligibility condition.

You must submit the following minimum information in order to properly initiate your request for information:

1. Project name (i.e., the name or title most commonly associated with your project);
2. A narrative description of the project;
3. Name, address, phone and fax number, and email address (if available) of the operator;
4. Most recent U.S. Geological Survey map section (7.5 minute quadrangle) showing actual project location and boundaries clearly indicated; and
5. Sections of site map that show locations where activities might cause an adverse effect on historic properties.

Without submitting this minimum information, your request cannot be considered. You will need to provide the SHPO, THPO, or other tribal representative a minimum of 15 calendar days after they receive these materials to respond to your request for information about your project. You are advised to get a receipt from the post office or other carrier confirming the date on which your letter was received.

If you do not receive a response within 15 calendar days after receipt by the SHPO, THPO, or other tribal representative of your request, then you may indicate this on your request for coverage under the general permit, and no further screening steps are necessary. Or, if the applicable SHPO, THPO, or other tribal representative responds to your request with an indication that no historic properties will be adversely affected by the construction or modification of your minor source, then you may indicate this on your request for coverage, and include a copy of the response and no further screening steps are necessary. After submitting your request for coverage, and during the 30-days following the receipt of your request, the SHPO, THPO, or other tribal representative may request that the EPA place a hold on authorization based on concerns about potential adverse impacts to historic properties. The EPA will evaluate any such request and notify you if any additional information is needed to address adverse impacts to historic properties before continuing review of your request for coverage under the general permit.

If within 15 calendar days of receipt of your request the applicable SHPO, THPO, or other tribal representative responds with a request for additional information or for further consultation regarding appropriate measures for treatment or mitigation of effects on historic properties caused by the construction, modification or operation of your minor source, you must comply with this request and proceed to Step 4.

2.4 Step 4

Consultation with your applicable SHPO, THPO, or other tribal representative.

If, following your discussions with the appropriate historic preservation authorities in Step 5, the applicable SHPO, THPO, or other tribal representative requests additional information or further consultation, you must respond with such information or consult to determine impacts and appropriate measures to mitigate such impacts to historic properties that may be caused by the construction, modification or operation of your new or modified minor source site. If as a result of your discussions with the applicable SHPO, THPO, or tribal representative, you enter into, and comply with, a written agreement regarding treatment and/or mitigation of impacts on your site, then you may indicate this on your request for coverage and include a copy of the written agreement, and no further screening steps are necessary.

If, however, agreement on an appropriate treatment or mitigation plan cannot be reached between you and the SHPO, THPO, or other tribal representative within 30 days of your response to the SHPO, THPO, or other tribal representative's request for additional information or further consultation, you may submit your request for coverage, but you must indicate that you have not negotiated measures to avoid or mitigate such effects. You must also include with your request for coverage under the general permit the following documentation:

1. Copies of any written correspondence between you and the SHPO, THPO, or other tribal representative; and
2. A description of any significant remaining disagreements as to mitigation measures between you and the SHPO, THPO, or other tribal representative.

After submitting your request for coverage under the general permit, and during the 30-day period after the receipt of your request for coverage under the general permit, the SHPO, THPO, ACHP or other tribal representative may request that the EPA place a hold on authorization based upon concerns regarding potential adverse effects to historic properties. The EPA, in coordination with the SHPO, THPO, ACHP or other tribal representative, will evaluate any such request and notify you if any additional measures to address potential adverse effects to historic properties are necessary.